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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/898,537 07/22/97 OZLUTURK

F I-2-103.1US

LM02/1105

EXAMINER

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ART UNIT	PAPER NUMBER
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2732

DATE MAILED:

11/05/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/898,537</b>	Applicant(s) <b>Ozluturk</b>
	Examiner <b>Bob A. Phunkulh</b>	Group Art Unit <b>2732</b>

Responsive to communication(s) filed on Aug 30, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 4-20 is/are allowed.

Claim(s) 1 and 2 is/are rejected.

Claim(s) 3 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 8

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

1. This communication is in response to applicant's 08/20/1999 amendment in the application of **OZLUTURK** for "**CDMA COMMUNICATION SYSTEM WITH SELECTIVELY ALLOCATES BANDWIDTH UPON DEMAND**" filed 07/22/1997. The amendments to the claims have been entered. No claims have been canceled. No new claims have been added. Claims 1-20 are now pending.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2 is rejected under 35 U.S.C. 103(a) as being unpatentable over I et al. (US 5671218) in view of Gitlin et al. (US 5,442,625).

Regarding claims 1-2, I et al. disclose that a base station in a wireless digital CDMA communication comprising: a processor for determining the type of the particular wireless device (mobile station or subscriber station), wherein the type of the particular wireless device is defined at least in part by the data rate of the particular wireless device and for producing a control signal based on the type of the particular wireless device for controlling the particular wireless device;

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and a transmitting antenna 20 ( **see fig. 1 and claims 1-23**). I et al., further disclose, that the wireless devices 12 and 14 permit the devices to have the same data rates or different rates base on the quality of services requirements (**see col. 4 lines 19-30, and col. 6 line 12 to col. 7 line 4**). I et al. did not explicitly teach that wireless devices also have means for determining the data rate. Gitlin et al., on the other hand, teach that a plurality of mobile units 200 - 200-N in CDMA communication system have means for determining the data rate to support communication (**see fig. 2-4, and col. 1 lines 45-59**). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to provide means for determining data rates at mobile stations or wireless devices as taught by Gitlin et al. in the system taught by I et al. to increase the performance of the system.

***Allowable Subject Matter***

4. Claims 4-20 are allowed.
5. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **Any response to this action should be mailed to:**

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 305-9051, (for formal communications intended for entry)

**Or:**

(703) 308-5403 (for informal or draft communications, please label

“PROPOSED” or “DRAFT”)

Hand-delivered responses should be brought to Crystal Park II, 2021

Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bob A. Phunkulh** whose telephone number is (703) 308-8251. The examiner can normally be reached on Monday-Friday from 8:00 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor **Douglas W. Olms**, can be reach on (703) 305-4703. The fax phone number for this group is (703) 305-3988.

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**B A. Phunkulh**

B A. Ph

*onu Patel*  
Ajit Patel  
Primary Examiner

TC 2700  
Art Unit 2732  
October 27, 1999